

## BakerHostetler

### Baker&Hostetler LLP

45 Rockefeller Plaza  
New York, NY 10111

T 212.589.4200  
F 212.589.4201  
www.bakerlaw.com

Keith R. Murphy  
direct dial: 212.589.4686  
kmurphy@bakerlaw.com

November 11, 2022

### VIA ECF

Hon. Cecelia G. Morris  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, Room 627  
New York, NY 10004-1408

*Re: Picard v. Bank Julius Baer & Co. Ltd.*, Adv. Pro. No. 11-02922 (substantively consolidated with *SIPC v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789)

Dear Judge Morris:

My firm represents the plaintiff, Irving H. Picard, trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act and the chapter 7 estate of Bernard L. Madoff, in the above-captioned adversary proceeding. I write jointly with counsel for the defendant, Bank Julius Baer & Co. Ltd. (“BJB”), with respect to the hearing on BJB’s motion to dismiss (ECF No. 114) scheduled for November 16, 2022 at 10:00 a.m. (ECF No. 117).

The parties write to provide the Court notice that they have conferred and agree to limit their respective arguments at the hearing to only the seventh ground for dismissal that BJB raised in its accompanying memorandum of law, *i.e.*, that the Amended Complaint’s newly alleged transfers from Fairfield Sentry Limited and Fairfield Sigma Limited to BJB do not relate back to the Trustee’s original Complaint under Federal Rule of Civil Procedure 15(c)(1)(B). (ECF No. 115 at 35-40; *see also* ECF No. 119 (Trustee’s Opposition) at 34-40; ECF No. 122 (BJB’s Reply) at 18-20.) The parties have agreed further to rest on their papers with respect to all other issues. Nothing herein shall be considered a waiver of any argument made in the parties’ filed papers or otherwise affect those arguments in any way.

Hon. Cecelia G. Morris  
November 11, 2022  
Page 2

Respectfully submitted,

/s/ Keith R. Murphy  
**Baker & Hostetler LLP**

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Keith R. Murphy  
Email: kmurphy@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Chapter 7  
Estate of Bernard L. Madoff*

**Windels Marx Lane & Mittendorf, LLP**

156 West 56th Street  
New York, New York 10019  
Telephone: (212) 237-1000  
Facsimile: (212) 262-1215  
Kim M. Longo  
Email: klongo@windelsmarx.com  
Alan D. Lawn  
Email: alawn@windelsmarx.com

*Special Counsel for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Chapter 7 Estate of  
Bernard L. Madoff*

/s/ Eric Halper  
**McKool Smith**

One Manhattan West  
395 9th Avenue  
New York, NY 10001  
Telephone: (212) 402-9400  
Facsimile: (212) 402-9444  
Eric Halper  
ehalper@mckoolsmith.com

*Attorneys for BJB*